



June 8, 1999

Mr. Paul W. Hunn
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR99-1591

Dear Mr. Hunn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125119.

The Graham Independent School District (the "district"), which you represent, received a request for "[a] figure on how much the district has spent litigating the Ryan Lee Basham lawsuit," information about "any other legal or travel expenses incurred by the district from Dec. 4, 1998 through March 22, 1999," "the total figure reflect [sic] all of Burns' expenses related to his March 23 appearance before the Court of Appeals in Fort Worth," and "Burn's hourly charge for his legal services." You indicate that you have asked the requestor to clarify the portion of the request concerning "any other legal or travel expenses." You state that Mr. Burns did not make an appearance before the Court of Appeals on March 23rd, and therefore the district does not have information responsive to this portion of the request. You contend that the amount of legal fees the district has incurred in the Basham lawsuit and the hourly rate charged for legal services is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us that the district is a party to ongoing litigation. *Basham v. Graham Indep. Sch. Dist.*, No. 27290 (90th Dist. Ct., Young County, Tex. Dec. 4, 1998). The district has counter-claimed for attorney's fees and costs. Therefore, the amount of legal fees the district has incurred and the hourly rate charged for legal services are related to the pending litigation. Accordingly, the district may withhold this information from disclosure under section 552.103.

In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125119

Encl. Submitted documents

cc: Mr. Cody Aycock
Staff Writer
Times Record News
1301 Lamar
Wichita Falls, Texas 76301
(w/o enclosures)